U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 16-0087 BLA

HARRY L. SNEIGLE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
McELROY COAL COMPANY	)	DATE ISSUED: 12/13/2016
	)	
and	)	
	)	
CONSOL ENERGY, INCORPORATED	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

Heath M. Long (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

George E. Roeder, III (Jackson Kelly PLLC), Morgantown, West Virginia, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits (2013-BLA-5583) of Administrative Law Judge Thomas M. Burke, rendered on a claim filed on May 17, 2012, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). The administrative law judge credited claimant with thirty-one years of coal mine employment, thirty years of which he found to be underground coal mine employment,[1] and determined that claimant suffers from a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). Based on these determinations, and the filing date of the claim, the administrative law judge found that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis under Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).[2] The administrative law judge further found that employer did not rebut the presumption. Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in finding total disability established pursuant to 20 C.F.R. §718.204(b)(2) and, therefore, erred in finding that claimant invoked the Section 411(c)(4) presumption. Employer further asserts that the administrative law judge erred in finding that employer failed to rebut the Section 411(c)(4) presumption.[3] Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a brief, unless specifically requested to do so by the Board.

[1] The record reflects that claimant's last coal mine employment was in West Virginia. Decision and Order at 3, n.2; Hearing Transcript at 14-17. Accordingly, the Board will apply the law of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[2] Under Section 411(c)(4), claimant is entitled to a rebuttable presumption that he is totally disabled due to pneumoconiosis if he establishes at least fifteen years of underground coal mine employment, or employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012), as implemented by 20 C.F.R. §718.305.

[3] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant established thirty years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 14.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

I. INVOCATION OF THE SECTION 411(c)(4) PRESUMPTION – TOTAL DISABILITY

Pursuant to 20 C.F.R. §718.204(b)(2)(i), the administrative law judge considered four pulmonary function studies, dated July 19, 2011, September 6, 2012, April 23, 2013, and November 8, 2013. Director's Exhibit 12; Employer's Exhibit 5; Claimant's Exhibit 1. The administrative law judge found that claimant failed to establish total disability based on the pulmonary function testing, as none of the studies was qualifying for total disability.[4] Decision and Order at 14-15. Pursuant to 20 C.F.R. §718.204(b)(2)(ii), the administrative law judge considered four arterial blood gas studies, dated July 19, 2011, September 6, 2012, April 23, 2013, and November 8, 2013. Director's Exhibit 12; Employer's Exhibit 5; Claimant's Exhibit 1. The administrative law judge found that the July 19, 2011, September 6, 2012, and April 23, 2013 studies were non-qualifying for total disability, but that the November 8, 2013 study was qualifying. Decision and Order at 15. The administrative law judge, however, indicated that he was persuaded by Dr. Spagnolo's explanation that the November 8, 2013 blood gas study was not a reliable indicator of claimant's pulmonary impairment, because the study was likely affected by medications claimant was taking, and by heart failure.[5] *Id.* Therefore, the administrative law judge found that the weight of the arterial blood gas evidence did not establish total disability. *Id.*

[4] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendices B and C. A non-qualifying study exceeds these values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

[5] The administrative law judge noted that "[Dr. Spagnolo] opined [that] the sudden change in the November 2013 [arterial blood gas study] results [was] likely caused by [c]laimant's vasodilator and beta blocker medication, as well as worsening heart failure." Decision and Order at 15, *citing* Employer's Exhibit 18 at 14, 24 at 35. The administrative law judge further noted that Dr. Spagnolo "explained that vasodilator and beta blocker medication dilate arteries and can cause too much blood to go across the alveoli without increased ventilation, resulting in less oxygen entering the blood and lower pO2 levels." *Id.*

Pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge weighed the relevant medical opinions. He noted that Drs. Saludes, Basheda, Begley, and Knight opined that claimant is totally disabled by a pulmonary impairment. Decision and Order at 16. The administrative law judge also noted that "Dr. Spagnolo did not offer an opinion on the presence or absence of a total pulmonary disability." *Id.* at 17. The administrative law judge credited the opinions of Drs. Saludes, Begley, and Basheda as well-reasoned and documented, and assigned additional weight to Dr. Saludes's opinion based on the "nature and duration of [his treatment] relationship and the frequency and extent of [his] treatment" with claimant. *Id.* at 16, 18; *see* 20 C.F.R. §718.104(d). The administrative law judge found that the opinions of Drs. Saludes, Begley, and Basheda established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).[6] *Id.* at 18.

Employer argues that the administrative law judge erred in finding that Dr. Saludes's opinion is well-reasoned and documented. Specifically, employer contends that Dr. Saludes's opinion is "speculative."[7] Employer's Brief at 19. Employer also asserts that the administrative law judge erred in assigning additional weight to Dr. Saludes's opinion based on his status as claimant's treating physician. *Id.*

There is no merit to employer's argument that Dr. Saludes's opinion is too speculative to support claimant's burden of establishing total disability. Based on the results of the objective testing, Dr. Saludes opined that claimant suffers from a "significant pulmonary impairment."[8] Director's Exhibit 12. When Dr. Saludes was

[6] The administrative law judge found that Dr. Knight's opinion was "not well[-]reasoned or well[-]documented since it [was] not supported by his testing." Decision and Order at 16.

[7] Employer asserts that "Dr. Saludes admitted during his [deposition] that he could not demonstrate [that claimant] was disabled from performing his last coal mine employment based solely upon pulmonary function impairment" and that "he 'suspected' [that claimant] was impaired because of an oxygen impairment." Employer's Brief at 16-19. Employer also argues that Dr. Saludes's findings, set forth in an Occupational Lung Disease Evaluation dated July 11, 2011, contradict the findings set forth in claimant's treatment records with Dr. Saludes. *Id.*

[8] Dr. Saludes obtained a pulmonary function study on July 19, 2011, which he stated revealed "a mixed obstructive and restrictive lung disease." Director's Exhibit 12. He reported that an arterial blood gas study performed on the same day revealed "mild hypoxemia," and he noted significant abnormalities in claimant's diffusion and blood gases. *Id.*; *see* Employer's Exhibit 7 at 29, 36. Additionally, Dr. Saludes agreed with Dr. Basheda that the results of claimant's pulse oximetry reflect a disabling pulmonary

asked about Dr. Basheda's findings, he agreed that if claimant engaged in significant exercise, "he would have [oxygen] desaturation." Employer's Exhibit 7 at 37. Dr. Saludes concluded that claimant is totally disabled from a pulmonary standpoint based on the results of his examination and objective testing, and by his need to use supplemental oxygen. *Id*. at 34-35. He concurred with Dr. Basheda that claimant would not be able to perform his usual coal mine employment[9] because he would need supplemental oxygen at such low levels of exertion. *Id*. Contrary to employer's arguments, the administrative law judge rationally found that Dr. Saludes's opinion is well-reasoned and documented, and "supported by his diffusion capacity and gas exchange results." Decision and Order at 16-17; *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc).

Moreover, the administrative law judge permissibly determined that the frequency, nature, and extent of Dr. Saludes's treatment of claimant lent his reasoned opinion additional weight pursuant to 20 C.F.R. §718.104(d).[10] *See Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 951, 21 BLR 2-23, 2-31 (4th Cir. 1997). The administrative law judge found that "Dr. Saludes has been [c]laimant's pulmonologist since 2010" for dyspnea and that he saw "[c]laimant about twelve times between July 2010 and November 2013." Decision and Order at 16, *citing* Hearing Transcript at 20-21; Employer's Exhibit 7. The administrative law judge noted that "Dr. Saludes indicated that he continuously treated [c]laimant, and has had multiple follow up evaluations and appointments since his initial exam in July 2010." *Id*., *citing* Employer's Exhibit 7.

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impairment, based on the drop of individual saturation levels with little exertion. *Id*. at 37-38.

[9] Dr. Saludes noted that claimant's last coal mine job required "heavy manual labor." Employer's Exhibit 7 at 18-19.

[10] The regulation at 20 C.F.R. §718.104(d) requires the adjudication officer to take into consideration the following factors in weighing the opinion of the miner's treating physician: (1) nature of relationship; (2) duration of relationship; (3) frequency of treatment; and (4) extent of treatment. 20 C.F.R. §718.104(d)(1)-(4). The regulation additionally provides that "the weight given to the opinion of a miner's treating physician shall also be based on the credibility of the physician's opinion in light of its reasoning and documentation, other relevant evidence and the record as a whole." 20 C.F.R. §718.104(d)(5).

Employer's arguments with regard to Dr. Saludes's opinion amount to a request that the Board reweigh the evidence, which it is not empowered to do. *Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111, 1-113 (1989).

Employer next argues that Dr. Basheda's opinion does not support a finding of total disability because Dr. Basheda relied, in part, on the results of the November 8, 2013 arterial blood gas study, which employer argues may have been affected by non-pulmonary conditions.[11] Employer's Brief at 13. Contrary to employer's contention, the administrative law judge acknowledged that the "November 8, 2013 [study] was affected by non-pulmonary conditions." Decision and Order at 18. However, the administrative law judge correctly found that Dr. Basheda "interpreted the prior arterial blood [study] results as evidencing a pulmonary condition."[12] *Id*.; Employer's Exhibits 5, 23. Moreover, notwithstanding the results of the November 8, 2013 blood gas study, Dr. Basheda opined that claimant would be unable to perform his usual coal mine employment based on the pulse oximetry results that demonstrated exercise-induced oxygen desaturation. Employer's Exhibit 23 at 35, 39. Therefore, we see no error in the

[11] As was summarized above, when the administrative law judge considered the blood gas study evidence under 20 C.F.R. §718.204(b)(2)(ii), he discounted the November 8, 2013 blood gas study because of Dr. Spagnolo's opinion that the study was likely affected by claimant's cardiac medications, and by heart failure. Employer additionally contends that claimant testified at the hearing that he had a stroke on November 1, 2013. Employer therefore asserts that the November 8, 2013 "test results may very well [have been] affected by the stroke which [claimant] sustained only a week earlier . . . ." Employer's Brief at 13. Employer maintains that it raised this issue in its post-hearing brief, but the administrative law judge failed to address it. *Id*.

[12] Dr. Basheda examined claimant on April 23, 2013. Employer's Exhibit 5. He noted that an arterial blood gas study taken on the same day showed mild hypoxemia, while a pulse oximetry "demonstrated significant exercise-induced oxygen desaturation." *Id*. at 6-7. In addition, Dr. Basheda reviewed arterial blood gas studies taken on July 19, 2011 and August 6, 2012, and noted that both studies revealed mild hypoxemia. *Id*. at 10-12. Dr. Basheda concluded that claimant was disabled from his last coal mine job, which required heavy labor, because of "significant exercise-induced oxygen desaturation on ambulatory pulse oximetry" that would qualify claimant "for oxygen therapy with exertion." *Id*. at 19. During his June 8, 2015 deposition, Dr. Basheda testified that he reviewed a November 8, 2013 arterial blood gas study, which demonstrated disabling "hypoxemia at rest." Employer's Exhibit 23 at 28. He reiterated his opinion that claimant would not be able to perform his usual coal mine employment based on the results of the pulse oximetry results. *Id*. at 35, 39.

administrative law judge's finding that Dr. Basheda's opinion supports a finding of total disability under 20 C.F.R. §718.204(b)(2)(iv), as it was based on objective testing other than the November 8, 2013 blood gas study. Moreover, because it is rational and supported by substantial evidence, we affirm the administrative law judge's decision to credit Dr. Basheda's opinion. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; *Clark*, 12 BLR at 1-155.

Finally, employer asserts that the administrative law judge erred in failing to consider Dr. Spagnolo's opinion as one that claimant is not totally disabled. Employer concedes that "Dr. Spagnolo's report does not contain a statement specifically asserting [that claimant] has no totally disabling pulmonary impairment . . . ." Employer's Brief at 20. Employer, however, contends that "it is clear from Dr. Spagnolo's explanation that [that] is the opinion which he held," because Dr. Spagnolo attributed claimant's hypoxemia to his cardiac conditions.[13] *Id*. Employer maintains that the administrative law judge erred in assuming "that hypoxemia is a pulmonary condition for purposes of demonstrating the existence of a totally disabling pulmonary or respiratory disability."[14] *Id*.

Contrary to employer's argument, the administrative law judge correctly found that the physicians of record agreed that claimant's arterial blood gas testing evidenced at least mild hypoxemia, and that Dr. Spagnolo rendered no opinion as to whether this mild hypoxemia would prevent claimant from performing his usual coal mine employment. Decision and Order at 18. Although Dr. Spagnolo focused his opinion on the etiology of claimant's hypoxemia, the relevant inquiry at 20 C.F.R. §718.204(b)(2)(iv) is whether the miner's respiratory or pulmonary impairment precludes the performance of his usual coal mine work. The etiology of the miner's pulmonary impairment concerns the issue of total disability causation, which is addressed at 20 C.F.R. §718.204(c), or in consideration of whether employer is able to successfully rebut the Section 411(c)(4) presumption. *See* 20 C.F.R. §718.305(d)(1); *W. Va. CWP Fund v. Bender*, 782 F.3d 129, 137, 25 BLR 2-689, 2-699 (4th Cir. 2015). Therefore the administrative law judge did not err in his consideration of Dr. Spagnolo's opinion, and we affirm, as supported by

[13] During his June 25, 2015 deposition, Dr. Spagnolo testified that claimant would be unable to "do the heavy labor required of him in his last coal mine job" because claimant is "impaired by his heart disease." Employer's Exhibit 24 at 36.

[14] Employer contends that hypoxemia "is simply deficient oxygenation of the blood" and that the "cause of hypoxemia may be pulmonary, cardiac, hematologic or environmental." Employer's Brief at 21-24.

substantial evidence, the administrative law judge's finding that claimant established total disability based on the medical opinion evidence under 20 C.F.R. §718.204(b)(2)(iv).[15]

Furthermore, we affirm the administrative law judge's overall finding that claimant established total disability, taking into consideration all of the contrary probative evidence under 20 C.F.R. §718.204(b)(2). *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon*. 9 BLR 1-236 (1987) (en banc); Decision and Order at 18. As claimant met his burden of establishing total disability, we affirm the administrative law judge's finding that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4). *See* 20 C.F.R. §718.305(b).

II. REBUTTAL OF THE SECTION 411(c)(4) PRESUMPTION

Because claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, the burden shifted to employer to rebut the presumption by establishing that claimant has neither legal nor clinical pneumoconiosis,[16] or by establishing that "no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in § 718.201." 20 C.F.R. §718.305(d)(1)(i), (ii); *see Bender*, 782 F.3d at 137, 25 BLR at 2-699; *Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 154-56 (2015) (Boggs, J., concurring and dissenting). The administrative law judge determined that employer disproved the existence of clinical pneumoconiosis by a preponderance of the x-ray, CT scan, and medical opinion evidence. Decision and Order at 20-21. However, the administrative law judge found that employer failed to

[15] Employer argues that the administrative law judge erred in failing to address whether Dr. Begley's opinion is undermined by his reliance on the November 8, 2013 arterial blood gas study. In light of our affirmance of the administrative law judge's determination that the opinions of Drs. Saludes and Basheda support a finding of total disability, any error by the administrative law judge in considering Dr. Begley's opinion would not constitute grounds for vacating the total disability finding. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[16] "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

disprove the existence of legal pneumoconiosis, as he discounted the opinions of employer's physicians, Drs. Basheda and Spagnolo, that claimant does not suffer from a chronic lung disease or impairment related to coal mine employment. *Id*. at 21-23. The administrative law judge also discounted the medical opinion of Dr. Knight regarding the etiology of claimant's disabling pulmonary impairment. *Id*. at 22.

Employer asserts that the administrative law judge did not properly analyze whether the opinions of Drs. Basheda and Spagnolo establish that claimant does not have legal pneumoconiosis, as defined at 20 C.F.R. §718.201. Employer argues that the administrative law judge erred by requiring its experts to "rule out" or opine that "no part" of claimant's pulmonary impairment was due to coal mine dust. Employer's Brief at 26-28. Employer states that the rule-out standard applies only to attempts to disprove the presumed connection between pneumoconiosis and total disability. Employer maintains that this case must be remanded for application of the correct rebuttal standard.

We agree with employer that the administrative law judge did not clearly set forth the proper rebuttal standard when weighing the opinions of Drs. Basheda and Spagnolo, to the extent that his rebuttal analysis combines the standards for disproving legal pneumoconiosis and disability causation. *See* Decision and Order at 22-24. The administrative law judge's error, however, does not require remand. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). The administrative law judge considered the explanations given by Drs. Basheda and Spagnolo for why they each excluded a diagnosis of legal pneumoconiosis, and he concluded that their opinions were not credible on the etiology of claimant's disabling pulmonary impairment. Thus, the administrative law judge determined that employer was unable to disprove the existence of legal pneumoconiosis because the opinions of its physicians were not credible, not because of his application of a particular rebuttal standard. *See Minich*, 25 BLR at 1-156; Decision and Order at 22-24.

Employer further contends that the administrative law judge's credibility determinations with respect to Drs. Basheda and Spagnolo are not rational. We disagree. The definition of legal pneumoconiosis "includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). The regulation also provides that "a disease 'arising out of coal mine employment' includes any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b). The administrative law judge recognized that Dr. Basheda "opined that obesity, coronary artery disease, cardiomyopathy and [valvular] heart disease with pulmonary arterial hypertension all could contribute and result in [c]laimant's hypoxemia," which the administrative law judge found to be disabling. Decision and Order at 9, *citing* Employer's Exhibit 23 at 37. The

administrative law judge permissibly concluded that Dr. Basheda "[did] not adequately explain why [c]laimant's thirty-one years of coal mine dust exposure would not have substantially aggravated [c]laimant's pulmonary disability."[17] Decision and Order at 24; *see* 20 C.F.R. §718.201(b); *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558, 25 BLR 2-339, 2-353 (4th Cir. 2013) (Niemeyer, J., concurring); *Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275- 76.

Employer next argues that the administrative law judge erred in discounting Dr. Spagnolo's opinion that claimant's "pulmonary symptoms and hypoxemia were caused solely by a cardiac condition."[18] Decision and Order at 23. We disagree. The administrative law judge noted that Dr. Spagnolo relied, in part, on the fact that claimant exhibited "worsening heart failure, down to 35% ejection fraction in January 2014." Decision and Order at 18. However, the administrative law judge noted further that Dr. Spagnolo conceded that "the ejection [fraction] in 2014 was not necessarily 35%, but rather was between 35% and 50%, with 50% being considered normal . . . ." *Id*., *citing* Employer's Exhibit 24 at 59-60. In addition, the administrative law judge recognized that Dr. Spagnolo conceded that "there has been either no change or an improvement in [c]laimant's left ejection fraction." *Id*. Further, the administrative law judge found that Dr. Spagnolo acknowledged that none of the doctors who evaluated claimant diagnosed congestive heart failure. *Id*., *citing* Employer's Exhibit 24 at 51-53. The administrative law judge further found that claimant was being treated by a cardiologist, Dr. Frenn, for his heart ailments, and Dr. Frenn "stated that most of [c]laimant's problems are lung-related." *Id., citing* Employer's Exhibit 5. Contrary to employer's arguments, the

[17] As the administrative law judge provided a valid reason for assigning less weight to Dr. Basheda's opinion with respect to whether claimant's blood gas exchange impairment constituted legal pneumoconiosis, we need not address employer's additional arguments concerning the administrative law judge's weighing of this opinion. *See Kozele v. Rochester & Pittsburgh Coal Co*., 6 BLR 1-378, 1-382-3 n.4 (1983).

[18] Specifically, Dr. Spagnolo testified that claimant's coronary artery disease caused congestive heart failure, or "destruction of muscle tissue of the heart." Employer's Exhibit 24 at 19-20. Dr. Spagnolo explained that, as a result, the heart's "ejection fraction," or ability to pump blood, "gets weak, [and] each time the heart pumps, it doesn't pump all of the blood out." *Id*. He further explained that a normal heart gets 50% percent of "the blood out with each pump, with each squeeze." *Id*. at 20. But he noted that claimant suffered from "diastolic dysfunction," which resulted in reduced "elasticity" of the heart that reduced blood flow. *Id*. at 21, 24. Dr. Spagnolo stated that when an individual's heart does not pump well, it can lead to shortness of breath and "impairment in gas exchange." *Id*.

administrative law judge permissibly found that Dr. Spagnolo's opinion was not consistent with claimant's treatment records and, therefore, was not persuasive. *Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275- 76; Decision and Order at 18, 23. Additionally, the administrative law judge permissibly found that Dr. Spagnolo "[did] not adequately explain how [he] eliminated claimant's thirty-one years of coal mine dust exposure as a factor" in claimant's pulmonary impairment. Decision and Order at 23; *see* 20 C.F.R. §718.201(b); *Owens*, 724 F.3d at 558, 25 BLR at 2-353; *Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275- 76.

Employer argues further that the administrative law judge erred in weighing the medical opinion of Dr. Knight. Dr. Knight performed the Department of Labor examination of claimant on September 6, 2012, and indicated that claimant's pulmonary function study evidenced "no obstruction" and a "mild decrease in FVC [and] FEV1," while arterial blood gas testing evidenced hypoxemia. Director's Exhibit 13. He recognized claimant's "work history regarding the coal industry . . . in addition to some degree of tobacco use."[19] *Id*. Based on the objective testing and medical history, Dr. Knight opined that claimant suffers from "[o]bstructive sleep apnea with chronic hypoxemia" and stated that the "etiology of [claimant's] dyspnea and obstructive sleep apnea is directly related to [claimant's] morbid obesity."[20] *Id*. He further indicated that "[d]espite a history of asthma, one could not definitely arrive at that diagnosis based on" the objective testing. *Id*. The administrative law judge noted that Dr. Knight "did not diagnose legal pneumoconiosis," but found that his opinion was not credible because he "relied on an incomplete smoking history." Decision and Order at 22-23.

Employer correctly argues that the administrative law judge did not adequately explain how Dr. Knight's reliance on an incomplete smoking history affected the credibility of his opinion, as Dr. Knight did not diagnose a chronic lung disease or impairment related to claimant's history of cigarette smoking. Employer's Brief at 28-29. However, the burden of establishing that this error is prejudicial and requires a remand is on employer. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 253-54, 25 BLR 2-779, 2-788 (4th Cir. 2016). Moreover, the determination of prejudice requires the Board to consider "the likelihood that the result would [be] different" on remand. *Id*.,

[19] Dr. Knight did not identify the number of years that he assumed that claimant worked in coal mine employment, and stated that he was not attaching an Employment History Form, CM-911a, to his report. Director's Exhibit 13.

[20] Dr. Knight also stated that there is likely a "contribution of coronary artery disease" to claimant's disability. Director's Exhibit 13.

citing Shinseki v. Sanders, 556 U.S. 396, 413 (2009) (holding that the appellant must explain how the "error to which [it] points could have made any difference").

As discussed above, the administrative law judge permissibly discounted the medical opinions of Drs. Basheda and Spagnolo for failing to adequately explain why claimant's pulmonary impairment was not significantly related to, or substantially aggravated by, claimant's thirty-one years of dust exposure in coal mine employment. A review of Dr. Knight's opinion does not reveal any discussion by Dr. Knight of why claimant's years of coal mine dust exposure did not contribute to, or aggravate, his pulmonary impairment, nor has employer identified any such explanation. Director's Exhibit 13. Thus, because Dr. Knight's opinion suffers from the same defect that the administrative law judge found with the opinions of Drs. Basheda and Spagnolo, we decline to remand this case for the administrative law judge to reconsider Dr. Knight's opinion. *See Shinseki*, 556 U.S. at 413; *Addison*, 831 F.3d at 253-54, 25 BLR at 2-788; *see also* 20 C.F.R. §718.201(b); *Hicks*, 138 F.3d at 532, 21 BLR at 2-334; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76. Thus, we affirm the administrative law judge's finding that employer failed to rebut the Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305(d)(1)(i).[21] *See Bender*, 782 F.3d at 137, 25 BLR at 2-699; *Minich*, 25 BLR at 154-56.

Because we have affirmed the administrative law judge's findings that the opinions of Drs. Basheda, Spagnolo, and Knight are not sufficiently credible to establish that claimant does not have legal pneumoconiosis, we also affirm the administrative law judge's determination that these same opinions are insufficient to establish that "no part" of claimant's disability is due to pneumoconiosis, as defined at 20 C.F.R. §718.201. 20 C.F.R. 718.305(d)(1)(ii); *see Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05, 25 BLR 2-713, 2-720-21 (4th Cir. 2015); *Scott v. Mason Coal Co.*, 289 F.3d 263, 269-70, 22 BLR 2-372, 2-382-84 (4th Cir. 2002); *Toler v. E. Associated Coal Corp.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995). Thus, we affirm the administrative law judge's finding that employer did not establish rebuttal at C.F.R. §718.305(d)(1)(ii), and we affirm the award of benefits. Decision and Order at 24; *see Bender*, 782 F.3d at 137, 25 BLR at 2-699; *Minich*, 25 BLR at 1-159.

[21] Employer argues that the opinions of Drs. Saludes and Begley, who diagnosed legal pneumoconiosis, are not well-reasoned or documented. Employer's Brief at 17, 33-35. However, as these opinions do not assist employer in establishing rebuttal of the Section 411(c)(4) presumption, the administrative law judge was not required to weigh them on the issue of legal pneumoconiosis. *See W. Va. CWP Fund v. Bender*, 782 F.3d 129, 137, 25 BLR 2-689, 2-699 (4th Cir. 2015).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge